

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL MISC.APPLICATION No. 2390 of 2006****For Approval and Signature:****HONOURABLE MR.JUSTICE A.L.DAVE**

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1 Whether Reporters of Local Papers may be allowed to
see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the
judgment ?

4 Whether this case involves a substantial question of law
as to the interpretation of the constitution of India, 1950
or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GULLU VAKIL @ ABDUL HABIB - Applicant(s)**Versus****STATE OF GUJARAT - Respondent(s)**

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Appearance :

MR SV RAJU WITH MR VIRENDRA BAHETI for the Applicant.

MR HM PRACHCHHAK, APP, for the Respondent-State.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE**Date : 23/06/2006****ORAL ORDER**

1. This is an application for bail preferred by the accused

mainly on the ground of non-filing of charge sheet within the stipulated period of 90 days from the date of his remand to judicial custody. The applicant had approached the learned Judicial Magistrate, First Class, at Anand, with similar application and that having been rejected, the present application is preferred.

2. Learned Advocate, Mr. Raju, appearing with Mr. Baheti, submitted that the Court below has committed an error in computing the number of days and adopting a principle that, if the Court is closed, the charge sheet filed on reopening has to be treated as a charge sheet filed within the stipulated period of 90 days.

2.1 Learned Advocate, Mr. Raju, has placed reliance on the decision in the case of **Meghji Jethabhai Vankar v. State of Gujarat, 1987(2) GLR 789** and **Hari Singh v. State of Rajasthan, 1998 Cri. L.J. 4641** to contend that while computing the period under Section 167(2) of the Code of criminal Procedure, provisions contained under Sections 9 and 10 of the General Clauses Act cannot be applicable.

2.2 Mr. Raju raised another contention that, while computing number of days, the actual time of remanding the accused to judicial custody should be taken into consideration. According to him, for that purpose, the period of 24 hours will have to be considered as a day, which is also not done by the Court below and, therefore, the application may be accepted.

3. Learned Additional Public Prosecutor, Mr. Prachchhak, has opposed this application. According to him, the statute contemplates number of days and there is no question of computing the period on hourly basis. He submitted that in the facts of the present case, before the right accrued to the applicant, charge sheet was already filed and, therefore, this application may be rejected.

4. In order that this Court may be able to deal with the contentions raised before it by rival sides, certain facts are necessary to be recorded.

- (1) 29th November, 2005 – The applicant came to be arrested at 02.00 hours.
- (2) 29th November, 2005 – The applicant was produced before learned Judicial Magistrate, First Class, Anand, and was remanded to judicial custody (time not known).
- (3) 27th February, 2006 – The applicant preferred application for default bail at 11.30 hours.
- (4) 27th February, 2006 – Charge sheet came to be filed at 13.30 hours in the Court.

4.1 Similarly, relevant provisions of law may also be referred to :

Section 167(2) of Code of Criminal Procedure.

“167. Procedure when investigation cannot be completed in twenty four hours:- (1).....

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers

further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that-

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,-

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence,

and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;”

Sections 9 and 10 of General Clauses Act

'9. Commencement and termination of time,-(1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the work "or"

(2) This section applies also to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

10. Computation of time,- (1) Where, by any Central Act or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding may be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877, applies.

(2) This section applies also to all Central Acts and Regulations made on or after the fourteenth day of January, 1887."

5. The question, now, therefore, would be what are the principles governing computation of period of 90 days (or 60 days, as the case may be) while considering an application for default bail. In this regard, reference may be had to the decision of the Apex Court in **State of M. P. v. Rustam, 1995 Suppl. (3) SCC 221**. In that decision, the Apex Court has taken a view that a clear period of 90 days has to expire before the right begins. The Apex Court observed that, one of the days on either side has to be excluded in computing the period of 90 days and that Sections 9 and 10 of the General Clauses Act warrant such interpretation in computing the prescribed period of 90 days. In the said case, the accused were remanded to judicial custody on 3.11.1993 and, therefore, Their Lordships observed that period of 90 days would commence from 4.9.1993 (excluding 3.9.1993) and expire on 3.12.1993 (including 2.12.1993). Their Lordships reckoned period of 27 days for the month of September, 31 days for the month of October and 30 days for the month of November while computing the period of 90 days. Thus, it is clear that, according to the interpretation given to the proviso to sub-section (2) of Section 167

of the Code of Criminal Procedure, in light of Sections 9 and 10 of the General Clauses Act, one of the days on either side has to be excluded while computing the period of 90 days . This Court has also taken a similar view in an unreported decision in the case of **Ketan Kantilal Sheth v. State of Gujarat** (Criminal Revision Application No.348 of 2003 decided on 13th September, 2004).

6. The judgments in the case of Meghji Jethabhai Vankar and Hari Singh (supra) relied upon by learned Advocate, Mr. Raju, cannot be of any assistance to the applicant in light of the decision of the Apex Court in the case of Rustam (supra).

6.1 If the principle settled by the Apex Court in the case of Rustam is applied to the facts of the present case, the applicant was remanded to judicial custody on 29.11.2005 and charge sheet was filed on 27th February, 2006. If number of days are computed, 29th November, 2005 has to be ignored. That would leave behind one day in the month of November 2005. 31 days of December 2005 and 31 days of January, 2006 will have to be taken into reckoning. The charge sheet was filed on 27th February, 2006 and, therefore,

27 days of February, 2006 will have to be taken into consideration. It would, thus, be clear that the charge sheet was filed on the 90th day. As per the view taken by the Apex Court in the case of Rustam (supra), a clear period of 90 days has to expire before the right begins. Therefore, in the instant case, the right would begin on the expiry of 90th day, i.e. 27th February, 2006 and, without dispute, the charge sheet was filed before the expiry of 27th February, 2006, at 13.30 hours. Differently put, the charge sheet was filed before the right of bail on account of default in filing charge sheet in time accrued to the applicant. The applicant preferred application for default bail before the right actually accrued to him. His preferring application before filing of charge sheet in absence of a right of default bail cannot be of any virtue to his case for default bail. Mere filing of bail application before expiry of period of 90 days (or 60 days as the case may be) would not give any right to the accused to claim default bail.

7. A novel and may be attractive point is raised by learned Advocate, Mr. Raju, that for the purpose of computing the period of remand to judicial custody while considering proviso to sub-section

(2) of Section 167 of the Code of Criminal Procedure for the purpose of default bail, computation should be made on hourly basis. Thus, the period must be construed to commence from the time the accused is remanded to judicial custody. According to Mr. Raju, that period would commence the moment the Court passes an order remanding the accused to judicial custody. In the instant case, according to Mr. Raju, the order remanding the accused to judicial custody was passed at 13.00 hours on 29th November, 2005 and, therefore, the period of 90 days should be construed to expire at 13.00 hours on 27th February, 2006.

7.1 It is not possible to accept this contention for the reason that, proviso to Section 167(2) of the Code of Criminal Procedure contemplates “days” and not hours. Basic principle of interpretation of statute is that, while interpreting a statutory provision, the Court cannot read what is not forming part of the provision nor the Court can ignore what is forming part of the provision. It is not possible to read this provision or interpret it in the manner suggested by reading “24 hours” in place of word “days”.

7.2 Apart from this, the provision is considered in the case of Rustam (supra) and interpreted by the Apex Court. The interpretation that is sought to be given by the learned Advocate for the applicant, if given would be contrary to the interpretation made by the Apex Court. The Apex court has considered the provision in terms of days and not in terms of hours.

7.3 We may refer to the Dictionary of Modern Legal Usage by Bryan Garner, published by Oxford., where the word “day” is interpreted as under :-

“day. Three legal conventions relate to this word. First, when given as the period of a notice, and prescribed as a necessary interval between two acts or events, day excludes the day of the notice and the act to be performed. Hence the full number of days prescribed intervenes, unless the law provides otherwise.

Second, when used as a period of time, day means the period of 24 hours, beginning at the stroke of midnight.

Third, when used in contrast to night, the word ordinarily denotes the period beginning at half an hour before sunrise and ending half an hour after sunset.”

The second convention would be relevant for our purpose, which says that, when word “day” is used as a period of time, it means the period of 24 hours beginning at the stroke of midnight. The first interpretation is also relevant, which says that when it is used to indicate a period of notice and is prescribed as a necessary interval between two acts or events, it excludes the day of notice and the act to be performed. Hence, full number of days prescribed intervenes unless law provides otherwise. In the case on hand, it is nobody's case that law makes any other contrary provision. As a result, computation of period of 90 days or 60 days cannot be made on 24 hour day basis commencing from the time of order of remand to judicial, as is suggested by learned Advocate for the applicant. That interpretation, if given, would be de hors the provision itself and contrary to meaning given to the provision by the Apex Court in the case of *Rustam* (supra).

7.4 In the facts of the case also, the contention cannot be accepted for reason that there is nothing on record to show that the order remanding the applicant to judicial custody was passed at

13.00 hours.

7.5 The sum total of the above discussion would be that, while computing number of days in light of proviso to Section 167(2) of the Code of Criminal Procedure, hourly computation, i.e. computing a day as a period of 24 hours commencing from the time of remand to judicial custody is not permissible. When the statute contemplates a particular number of days, it has to be interpreted and treated as a “day” and it cannot be interpreted in terms of hours.

12. The application, therefore, must fail on merits. When the applicant preferred the application, the right had not accrued to him and before the right could accrue to him on completion of 90 days, the charge sheet was filed. The applicant is, therefore, not entitled to default bail. The application, therefore, must fail and stands rejected.

[A. L. DAVE, J.]

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